UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2002/NGO/3
19 July 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fourth session
Item 2 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Written statement* submitted by the Jammu and Kashmir Council for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 July 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 4 2 9 7 *

ENG

Although India and Pakistan have agreed upon a common jurisprudence to resolve peacefully the question of self-determination of the people of Jammu and Kashmir, yet we see that the two countries are embroiled in a proxy politics for the last 54 years and in a proxy war for the last 12 years. Indian security forces and the militants since January 1990 share between them the death of a generation. Death in plurals is a daily feature in Kashmir.

The people of Kashmir have been reduced to a non-people. Most of their human rights and fundamental freedoms exist in name only. India and Pakistan continue to violate the UN edict on the freedom of 'lawful entry and exit' of the people across the cease fire line. UN cease-fire arrangement of January 1949 to keep apart the two feuding soldiers has in fact divided the people. The two armies have denied the right to freedom of movement and travel to the people for the last 53 years.

During the last 12 years the civil society has suffered a massive violation of human rights. Security forces and the militants in their respective contexts of operation have violated human rights and fundamental freedoms.

Prima facie on the question of a 'title' to the right of self-determination, of the people of Jammu and Kashmir there appears to be no problem with the jurisprudence of the case. It is only in the event of an apparent affinity and a wrong positioning by the leadership that India and Pakistan are forced to defend their respective 'claims'.

Peace is a prelude to any script of progress and development. India and Pakistan as member nations of UN have subscribed 'to maintain international peace and security and to that end, to take effective collective measures for the prevention and removal of threats to peace and for the suppression of acts of aggression or other breaches of peace and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace'.

India and Pakistan, have accrued a higher burden of responsibility upon an awkward positioning vis a vis the two governments of Jammu and Kashmir at Srinagar and Muzaffarabad. At the same time the government in Srinagar has insulated itself against its duty to the people across the line of control and the government in Muzaffarabad too forgets its duty to people on the other side of the line of control.

For a wayforward we need to identify a jurisprudence that the two countries have agreed upon and short-list the areas where they remain in dispute. More so, we have to take into consideration the Kashmiri poise in this common minimum. It is understandable that the three parties, India, Pakistan and the people of Kashmir have a common minimum and at the same time hold positions at variance to each other.

We need to understand the history of mistrust between India and Pakistan. It is rooted in the scheme and scene of partition. International community has to help them to demolish the 'Bastille' of their bad memories. India and Pakistan have caused themselves as parties to the dispute in January 1948 at the United Nations. However, an Instrument of Accession with India and a Stand Still Agreement with the Government of Pakistan pre date the UN involvement. The arrangement of Pakistan with Gilgit and Baltistan is post UN Resolutions on Kashmir.

Without prejudice to the respective jurisprudence of the Indian and Pakistani control the people of Jammu and Kashmir need an urgent attention. In this regard international institutions shall have to assist them in folding off the violence of the demonic forces. First of all we need to ensure a leadership which is 'mature in judgement' and 'enlightened in conscience'.

Transfer of a free will in the choice of leaders, people's trust, transparency and accountability are key elements in a public mandate. The present leadership in Pakistani controlled Kashmir, Indian controlled Kashmir and Gilgit and Baltistan has not positioned itself vis a vis India and Pakistan in 'equity and good faith' based on the plural interests of the citizens of Jammu and Kashmir.

We need to ask ourselves a fundamental question – as to why the international community has not been hearing much from the leadership of Kashmir, about the full flux of the undisputed jurisprudence on Kashmir case. The respective influences of India and Pakistan have encouraged a pseudo and non-representative leadership in Kashmir. It has therefore failed to position itself on the question of its basic human right. There would have been no problem if it had poised itself in accordance with the jurisprudence of the case.

The UN resolutions, Tashkent, Shimla and Lahore agreements and declarations are a settled jurisprudence on the subject. The respective controls of India and Pakistan, judgements of various courts, the legislative assemblies at Srinagar and Muzaffarabad and day to day conduct of public affairs in various parts of Jammu and Kashmir, have also created a direct and relevant jurisprudence. The constitutions of India and Pakistan too reserve an interest in this jurisprudence. Unfortunately, the international community has not been sufficiently sensitized to encourage India and Pakistan for a peaceful resolution around an undisputed jurisprudence on Kashmir.

The concept of leadership in Kashmir falls short of the progress made in the concept of people's representation across the globe. In its present shape and style it is undemocratic and continues to be spoon fed by India and Pakistan to serve their respective claims.

It has failed to open up to any input from non-party experts and other necessary inputs from the general public. The understanding of the Kashmiri leadership of this vast flux of jurisprudence is sufficiently unreliable. Their political vocabulary and diplomatic phrase has failed to move with the times and as such has become obsolete. Kashmiri politics has an overbearing punitive component and is not prepared to model itself on tolerance and a popular mandate.

It is important that the international community moves forward to short list the common jurisprudence shared by India and Pakistan under the United Nations and conjoins it with the provisions of Tashkent Declaration and Shimla Agreement which define the broader contours of a settlement.

International community shall have to move in to help the political institutions in Kashmir to reinstate a sense of accountability, responsibility and culpability. At present there is no established mechanism, which a common citizen can invoke and press a grievance against the failings of a leader. A leader is a leader - 'lock, stock and barrel'. The other reason of the suffering of the people of Kashmir is a lack of an 'informed choice'. The use of violence by the state and non-state parties has anaesthetized the collective will of the people. The civil society needs to be purged of this virus of violence.

It has to be fairly put to India and Pakistan that they cannot turn their backs on the principal grievance of the people of Jammu and Kashmir. Their control over the respective governments at Srinagar and Muzaffarabad and the Northern Areas has a common jurisprudence under UN Resolutions. Bilateral declarations [Tashkent] and agreements [Shimla and Lahore] four constitutions, Indian, Pakistani, J & K government and Azad Kashmir government and April 1949 agreement on Northern Areas add an agreed and a de facto jurisprudence to the question of Jammu and Kashmir.

In any dispensation it is important to point out that the people of Kashmir have a title to the right of self-determination and India and Pakistan have their respective claims. A title takes precedence over a claim.

It is therefore important that we assist the people of Kashmir in understanding the full regime of their human rights and fundamental freedoms. To this effect we need to educate and encourage them that they shall have to take charge to ensure that the leadership is a product of their free choice.

In this regard it is high time that United Nations starts bringing India and Pakistan around the common jurisprudence assented to by these two countries on various parts [Indian controlled, Pakistan controlled parts and Northern Areas] for a peaceful resolution of the Kashmir case and for a full exercise of human rights and fundamental freedoms by the people.

The two countries shall have to dismantle the 'Bastille' of their bad memories. International community has to move forward to help India and Pakistan to demolish the Bastille of their mistrust. We see that various disciplines in the civil society in India, Pakistan, in Kashmir and abroad are making genuine efforts in search of a peaceful solution.

At a time when the people of Kashmir are suffering and the two nuclear countries stare into each others eyes an effort to organize an intra-Kashmir dialogue in search of Peace and Solution undertaken by G. M. Shah the veteran Kashmiri leader and President of Jammu and Kashmir Awami National Conference is highly commendable. It needs to be supported by the UN and other institutions working for the welfare of civil societies. The Status Paper prepared by the Organizing Committee and circulated by its chair Muzaffar Shah needs support and input. We need to urge upon India and Pakistan that they remain supportive and sympathetic to travel facilities for the identified participants requested by the organizing committee.